IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

DEFENDANT SHERIFF WARREN'S RESPONSE TO MOTION TO EXPEDITE DISCOVERY

COMES NOW, Defendant Sheriff David Warren ("Sheriff Warren") and respectfully requests that this Court deny Plaintiffs' Motion to Expedite Discovery and states as follows:

1. Plaintiffs filed their Complaint on March 9, 2005 seeking injunctive relief and a declaratory judgment.

2. Along with their Complaint, Plaintiffs' also filed an Application for Preliminary Injunction and Expedited Hearing and a Motion for Expedited Discovery.

3. In the Motion for Expedited Discovery, Plaintiffs request this Court to grant them leave to depose Sheriff Warren, propound requests for admissions, and propound requests for production to Sheriff Warren. Plaintiffs seek discovery to present its claims "that there is no rational basis for the Defendant Sheriff's First and Second Amended Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County." (Motion at ¶ 2.)

4. A party seeking expedited discovery has the burden of showing good cause for the departure from the usual discovery procedures. *Qwest Communications International, Inc. v. Worldquest Networks, Inc.*, 213 F.R.D. 418. While the filing of a request for a preliminary injunction may constitute good cause, the movant must still demonstrate that the movant is entitled to expedited discovery. The four factors to be considered in determining whether to grant a motion for expedited discovery are very similar to the factors necessary for the issuance of a preliminary injunction: (1) irreparable injury, (2) some probability of success on the merits, (3) some connection between the expedited discovery and the avoidance of the irreparable injury, and (4) some evidence that the injury that will result without expedited discovery looms greater than the injury that the defendant will suffer if expedited relief is granted. *Cecere v. County of Nassau*, 258 F.Supp.2d 184 (E.D. N.Y. 2003).

5. In this case, Plaintiffs fail to establish the four factors necessary for deviating from Rule 26(d) sufficient to warrant expedited discovery.

6. First, Plaintiffs cannot show that they have suffered any injury. Plaintiffs only allegations regarding injury is speculative at best.

7. Second, Plaintiffs have not and cannot establish a likelihood of success on the merits. As demonstrated in Sheriff Warren's Response to Application for Preliminary Injunction, Plaintiffs' claims are not ripe for adjudication, the request for relief is moot, and the First and Second Amended Rules and Regulations for the Conduct of Bingo in Macon County, Alabama are rationally related to a legitimate governmental interest.

8. Plaintiffs' claims are not ripe for adjudication because Plaintiff Reach One, Teach One's ("Reach One") application is incomplete and has not been approved or

denied. Plaintiff Reach One submitted an application to the Sheriff of Macon County for a Class B Bingo License to conduct bingo at a location operated by Plaintiff Macon County Investments, Inc. ("MCI"). Plaintiff Reach One sought approval for MCI as a "qualified location" as that term is defined in the Rules and Regulations for the Conduct of Bingo in Macon County, Alabama. The Sheriff of Macon County has neither approved nor denied the application request. Therefore, Plaintiffs' claim is not ripe for adjudication and no claim or controversy is presented in this case.

9. In addition, the relief sought by Plaintiffs is moot. In the instant case, Plaintiffs request this Court to: (1) invalidate certain amendments to the Rules and Regulations for the Conduct of Bingo in Macon County, Alabama which were first promulgated in December of 2003 ("2003 Bingo Rules"), and (2) compel the Sheriff to issue Plaintiff Reach One a Class B Bingo License pursuant to the version of the Bingo Rules that were in effect prior to the adoption of the amendments. However, Plaintiffs are not entitled to the relief they seek because Plaintiff Reach One's application is incomplete even when evaluated pursuant to the 2003 Bingo Rules. Therefore, this court is unable to compel the relief that the Plaintiffs seek.

10. Next, Plaintiffs' Complaint fails to demonstrate that the First and Second Amended and Restated Rules and Regulations for the Conduct of Bingo in Macon County, Alabama are not rationally related to a legitimate government interest and they fail to demonstrate that Sheriff Warren's actions were triggered by a discriminatory motive or purpose. *Snowden v. Hughes ,* 321 U.S. 1, 8 (1944); *Kuhn v. Thompson,* 304 F.Supp, 2d 1313, 1332 (M.D. Ala. 2004); *Arrington v. Dickerson*, 915 F.Supp. 1503, 1509 (M.D. Ala. 1995). Moreover, no good faith basis exists for taking the deposition of Sheriff Warren

because the Commentary to the 2004 Amendments and the 2005 Amendments speak for themselves.

11. With regards to the third and fourth factors, Plaintiffs have not and cannot demonstrate that their alleged injuries could be avoided by expedited discovery or that their alleged injury "looms greater" than Sheriff Warren's injury. Plaintiffs have failed to demonstrate that they have suffered or are suffering any injuries related to the promulgation of amendments to the 2003 Bingo Rules or that expedited discovery will alleviate those alleged injuries. Instead, Plaintiffs argue that they are entitled to expedited discovery in order to "fully present these claims to the Court on hearing for preliminary injunction." (Motion at ¶ 2.) Moreover, Plaintiffs submitted a request for the production of documents related to Class B Bingo Licenses and Applications pursuant to the Alabama Open Records Act immediately prior to this lawsuit which would most likely be duplicative of the proposed request for production in their Motion. Therefore, expedited discovery would result in unnecessary expense to the Sheriff's office in the form of administrative costs and manpower hours. Without more, Plaintiffs have failed to establish the third and fourth factors necessary for expedited discovery.

WHEREFORE, the premises considered, Defendant Sheriff Warren moves this Honorable Court to deny the Plaintiffs' Motion for Expedited Discovery.

Dated this 3rd day of April, 2006.

Respectfully submitted,

/s/ Fred D. Gray
Fred D. Gray (GRA022)

/s/ Fred D. Gray, Jr.
Fred D. Gray, Jr. (GRA044)

Attorneys for Defendant,
David Warren, Sheriff of Macon County,
Alabama

OF COUNSEL:

GRAY, LANGFORD, SAPP, McGOWAN,
GRAY & NATHANSON
P.O. Box 830239
Tuskegee, AL 36083-0239
334-727-4830 Telephone
334-727-5877 Facsimile
fgray@glsmgn.com
fgrayjr@glsmgn.com

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth L. Thomas, Esq.
Ramadanah M. Salaam, Esq.

s/Fred D. Gray, Jr.
OF COUNSEL